

01
02
03
04
05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 JULIO CESAR VALDEZ-SANCHEZ,)
08) CASE NO. C11-1483-RAJ-MAT
Petitioner,)
09)
v.) SUPPLEMENTAL REPORT AND
10) RECOMMENDATION
NATHALIE ASHER,)
11)
Respondent.)
12 _____)

13 I. INTRODUCTION AND SUMMARY CONCLUSION

14 Petitioner, confined at the Northwest Detention Center in Tacoma, Washington by the
15 United States Immigration and Customs Enforcement (“ICE”), filed a pro se petition for writ of
16 habeas corpus pursuant to 28 U.S.C. § 2241, challenging the lawfulness of his continued
17 detention. (Dkt. No. 7.) He requests that the Court order his release from custody on
18 conditions or reasonable bond, arguing that “such custody violates the due process rights of the
19 Petitioner.” *Id.* at 1. On January 9, 2012, the undersigned Magistrate Judge issued a Report
20 and Recommendation (R&R), recommending that petitioner’s habeas petition be granted and
21 respondent’s motion to dismiss be denied. (Dkt. No. 15.) The undersigned Magistrate Judge
22 found that petitioner was entitled to an individualized bond hearing before an immigration

01 judge and to be released from custody unless the government establishes by clear and
02 convincing evidence that he is a flight risk or a danger to the community. *Id.* at 5-6 (citing
03 *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011) (holding that the government must prove
04 by clear and convincing evidence that an alien is a flight risk or a danger to the community to
05 justify denial of bond at a *Casas* hearing); *Casas-Castrillon v. Dept. of Homeland Sec.*, 535
06 F.3d 942 (9th Cir. 2008); *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008)). The Court
07 further found that although petitioner had received a *Casas* bond hearing, the immigration judge
08 failed to properly allocate the burden of proof on the government. *Id.*

09 On January 6, 2012, three days before the undersigned Magistrate Judge issued the
10 R&R, the immigration judge conducted another *Casas* bond hearing. In a memorandum
11 decision dated January 30, 2012, the immigration judge found the government had met its
12 burden to establish by clear and convincing evidence that petitioner's continued detention was
13 justified because he presented a danger to the community and a flight risk, and denied bond.
14 (Dkt. No. 17, Ex. 1.)

15 II. DISCUSSION

16 In *Casas-Castrillon*, the Ninth Circuit addressed the prolonged detention of aliens under
17 8 U.S.C. § 1226 pending direct judicial review of their administratively final orders of removal.
18 *Casas-Castrillon*, 535 F.3d at 942. The Court determined that even where detention is
19 statutorily permissible, "due process requires 'adequate procedural protections' to ensure that
20 the government's asserted justification for physical confinement 'outweighs the individual's
21 constitutionally protected interest in avoiding physical restraint.'" *Id.* at 950 (quoting
22 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). The Court held that such aliens are entitled to a

01 bond hearing before a neutral immigration judge with the power to grant them bail unless the
02 government establishes by clear and convincing evidence that they are a flight risk or will be a
03 danger to the community. *Id.* at 951; *Singh*, 638 F.3d at 1205.

04 Here, however, the record shows that on January 6, 2012, petitioner received a *Casas*
05 bond hearing before an immigration judge. (Dkt. No. 17, Ex. 1.) The immigration judge
06 determined that the government had established by clear and convincing evidence that
07 petitioner's continued detention was justified because he presented a danger to the community
08 and a flight risk. *Id.* at 5-6.

09 Because petitioner was afforded a *Casas* bond hearing before an IJ, he has received all
10 of the benefits of due process he is entitled, and his petition has become moot and should be
11 dismissed. *See Prieto-Romero*, 534 F.3d at 1065-66 (holding that due process is satisfied once
12 an alien has "had an opportunity to contest the necessity of his detention before a neutral
13 decisionmaker and an opportunity to appeal that determination to the BIA."); *see also*
14 *Flores-Torres v. Mukasey*, 548 F.3d 708, 710 (9th Cir. 2008).

15 III. CONCLUSION

16 For the foregoing reasons, the Court recommends that petitioner's petition for writ of
17 habeas corpus be DENIED, respondent's motion to dismiss be GRANTED, and this matter be
18 dismissed with prejudice. A proposed order accompanies this Report and Recommendation.

19 DATED this 20th day of March, 2012.

20 

21 Mary Alice Theiler
22 United States Magistrate Judge